IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

W.A.No.342 of 2004

AGAINST THE JUDGEMENT IN W.P.(C).NO.35283/2003-A DATED 22/01/2004
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APPELLANTS: PETITIONERS:-
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1. MINI MATHEW, W/O. MATHEW P.ANTONY,
   AGED 34 YEARS, POONILIL HOUSE, NEAR KAIPATUR CHURCH,
   KALADY P.O., ERNAKULAM.

2. SMT. GEETHA VARGHESE, W/O. V.VARGHESE,
   KARIMATTOM HOUSE, CHANGANCHERRY P.O.

BY ADV. SRI.SABU GEORGE.

RESPONDENTS: RESPONDENTS:-
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1. KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LIMITED,
   6TH FLOOR, HOUSING BOARD BUILDING,
   SHANTHI NAGAR, THIRUVANANTHAPURAM,
   REPRESENTED BY ITS MANAGING DIRECTOR.

2. STATE OF KERALA, REPRESENTED BY ITS
   CHIEF SECRETARY, THIRUVANANTHAPURAM.

R1 BY STANDING COUNSEL SRI.M.A.MANHU.
R2 BY SPECIAL GOVERNMENT PLEADER SRI.C.T.RAVIKUMAR.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & Harun-Ul-Rashid,J.

W.A.No.342 of 2004-E

Dated, this the 2nd day of August, 2007

JUDGMENT

H.L.Dattu,C.J.

This appeal arises out of an order passed by the learned Single Judge in W.P.(C).No.35283 of 2003 dated 22nd January, 2004.

(2) Petitioners are allottees of sheds/units in the Ettumanoor Industrial Estate by the first respondent-Corporation.

(3) The Corporation by its letter dated 30.7.2003 had made an offer to the petitioners, pursuant to a scheme floated by the Government. In the said letter, the petitioners were informed to remit a particular amount within a particular time and if such amount is remitted within the time stipulated therein, the petitioners can take advantage of the scheme known as "Lease to Outright Sale" ("ORS" for short). The letter of the 1st respondent-Corporation is as under:

> "Ref:No.IE.Genl 6147/2000 Dated 30.07.2003.
>
> M/s.Phair Laboratories,
> Shed No.C1, C2 & B6,
> Industrial Estate, Ettumanoor.
>
> Sir,
>
> Sub: Conversion of land/sheds from rent to ORS - Implementation of Government Order on One Man Commission's Report-statement of dues forwarded.
>
> Ref: 1. G.O.(MS).No.14/2003/ID dated 27.1.2003.
>
> Ref: 2. Board of Directors Resolution No.6/200 dated 9.7.03.
>
> .....
>
> 1. On the basis of the Board Resolution cited the revised calculation of the dues/amount to be remitted for conversion from "Lease to Outright Sale" to allottees of sheds on lease basis as ordered in Government Order cited (1) is prepared and enclosed with this.

2. You are requested to remit an amount of Rs.3,36,442/- (Rupees Three lakhs thirty six thousand four hundred and forty two only) including Processing fee of Rs.1000/- at the earliest and anyhow before 31.8.2003. This amount includes the ORS due with interest calculated upto 31.8.2003, and excluding the rent dues with interest calculated upto 31.8.2003, and excluding the rent dues from 4/2003 to 8/2003, which will be furnished at the time of remittance. You are also informed that, since this is a one time offer, failure to remit the amount and settle the dues within the said time limit interest @ 14% will be charged with effect from the date of conversion (30.06.1992) till the date of remittance.

3. We will also be forced to take appropriate Recovery action including eviction of shed/Revenue recovery if the rent/ORS dues are not remitted before the due date of 31.8.2003.

4. You are liable to pay the excess amount, if any, that may be found in future, in case (a) excess land is found on re-survey, (b) difference in area of shed and/or (c) errors in the calculation of the value.

5. Please note the dues in Para (2) above are calculated as per our records and the details available with us. Complaints, if any, regarding the amounts already remitted or errors or omissions, may be informed to us with copies of receipts documents etc. within 10 days from the date of receipt of this communication for reconciliation of this from our and Please also note that no extension of time will be granted to remit the dues. If no complaints are received, the calculation of dues as per this will be treated as final subject to Para 4 above.

6. Sale Deed for the plot shed will be issued on full settlement of the dues as above and on priority basis as and when SIDCO receives Pallavam from the Revenue Department for which we have taken necessary action.

7. Our general rules for “allotment of land shed on Out right Sale basis 1996” shall also be binding on the allottee as applicable.

Encl: As above.

Yours faithfully,
For Kerala Small Industries Development Corporation Limited

Sd/-
G.ASOK KUMAR
Manager (IE)”.

(4) Instead of accepting the offer so made by the Corporation, the petitioners by their letter dated 25.08.2003 informed the Corporation that they have some peculiar and unique problems to accept the offer made.

(5) Since the petitioners had not accepted the offer so made by the Corporation, they had no other alternative but to issue an eviction notice, dated 30.10.2003. It is at that stage that the petitioners were before this Court by filing the writ petition.

(6) The prayers in the writ petition are as under:

> "1. Issue a writ of certiorari, order or direction in the nature thereof calling for the records relating to Exhibit P3 and quash the same to the extent that rent is demanded from the petitioners after 30.06.1992 along with interest thereon and amounts paid as stated in the Writ Petition are not credited towards purchase money and the value arrived at therein does not effect a diminution on account of dilapidated sanitation system referred to in Ext.P4.
>
> 2. Issue a writ of certiorari, or order or direction in the nature thereof calling for the records relating to Ext.P5 and P7 and quash the same.
>
> 3. Issue a writ of mandamus order or direction in the nature thereof directing the respondents to issue a fresh demand notice, showing the correct amount to be remitted by the petitioner, after duly considering the objections raised by the petitioner in Ext.P4 and also affording the petitioners an effective opportunity of being heard".

(7) Keeping in view that the petitioners were allottees of industrial sheds and also keeping in view the scheme floated by the State Government, which is beneficial to the allottees of industrial sheds on lease basis, the learned Single Judge thought it fit to direct the petitioners to deposit a sum of Rupees One Lakh within a particular time and if such amount is deposited, the Court was further pleased to observe that the petitioners shall not be evicted. The order passed by this Court is as under:

> "It is for the petitioner to accept the offer of the first respondent failing which all coercive steps will be enforced. There will be a direction to the first respondent not to evict the petitioner for a

> period of one month, within which time, the petitioner will make balance payment, with or without reduction in terms of offer under Ext.P3. If the petitioner does not exercise option by paying the balance amount demanded by the first respondent, the amount now paid will be adjusted towards arrears of rent".

(8) Aggrieved by the orders passed by the learned Single Judge, the petitioners are before us in this Writ Appeal.

(9) The learned counsel appearing for the appellants would contend that the Corporation is *"other authority"*, which would come under Article 12 of the Constitution of India and, therefore, the Corporation is expected to act fairly and not arbitrarily and, therefore, the Corporation should have redressed the grievance of the appellants stated in Exhibit P4 before issuing Exhibit P7 notice.

(10) This Court while entertaining the Writ Appeal had directed the appellants to make a further deposit of a sum of Rupees One Lakh. We are informed by the learned counsel appearing for the appellants that the interim directions issued by this Court have been obeyed by the appellants.

(11) The facts are not in dispute, in the sense, that the appellants are allottees of industrial sheds/plots in the Ettumanoor Industrial Estate. It is also not in dispute that the Corporation had issued a letter dated 30.07.2003 giving an offer to the appellants to convert the "lease" of the plot to an "outright sale" subject to certain conditions. If for any reason the appellants wanted to take advantage of the offer so made, should have gone before the respondent Corporation and should have paid the amounts as demanded by them without making a counter offer/a conditional offer. Since the conditional offer so made by the appellants was not accepted by the Corporation, we are of the opinion that the Corporation was justified in issuing Exhibit P7 notice. However, the learned Single Judge taking a sympathetic view in the matter had directed the appellants to make a deposit of a sum of Rupees One lakh within a

particular time. The Court had further directed the Corporation not to evict the appellants for a period of one month. The Court had further stated that if for any reason the appellants want to exercise their offer under Exhibit P3, they are at liberty to do so within a particular time. In our opinion, even now the order passed by the learned Single Judge stands in the sense that it is for the appellants to accept the conditions stipulated in Exhibit P3.

(12) In view of the above discussion, in our opinion, the Writ Appeal requires to be disposed of and is disposed of as under:

Order

(i) The first respondent-Corporation will adjust the amounts paid by the appellants pursuant to the orders and directions issued by this Court, firstly towards the arrears of rentals payable by the appellants.

(ii) After such adjustment, the Corporation shall issue a fresh demand notice, as is done in Exhibit P3, within a month's time from today.

(iii) If for any reason the appellants accept the offer within a month's time thereafter, the Corporation shall execute an appropriate sale deed.

(iv) If for any reason the appellants fail to comply with the fresh demands made by the Corporation, they are at liberty to evict the appellants in accordance with law.

Ordered accordingly.

H.L.Dattu
Chief Justice

Harun-Ul-Rashid
Judge

vku/DK.